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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.   | CONFIRMATION NO. |
|---|-------------|----------------------|-----------------------|------------------|
| 10/642,810  | 08/14/2003  | Len Ekkert           | 1620-82491            | 3127             |
| 24628   | 7590        | 03/04/2005           | EXAMINER              |                  |
| WELSH & KATZ, LTD<br>120 S RIVERSIDE PLAZA<br>22ND FLOOR<br>CHICAGO, IL 60606 |             |                      | ELOSHWAY, NIKI MARINA |                  |
|   |             |                      | ART UNIT              | PAPER NUMBER     |
|   |             |                      | 3727                  |                  |

DATE MAILED: 03/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/642,810

Applicant(s)

EKKERT, LEN

Examiner

Niki M. Eloshway

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4-6, 8, 9, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Atkinson (U.S. 5,705,212). Atkinson teaches a cap-utensil combination comprising a cap 14, a rib structure 30, 32, and a utensil 22. The cap has a top 14a and a side wall 14b. The utensil 22 has first and second points of contact at 30 and 32 and a third point of contact with the top wall, shown in fig. 2.

3. Claims 1-3, 6-9, 11-15, 18 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Stanish (U.S. 4,216,875). Stanish teaches a cap-utensil combination 20 comprising a cap 24, a rib structure 42, and a utensil 52. The cap has a top 28 and a side wall 34. The utensil 52 has first and second points of contact at opposite ends 64 and 62 and a third point of contact with the top wall at 68.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stanish (U.S. 4,216,875) in view of Murdick et al. (U.S. 5,706,974). Stanish discloses the claimed invention except

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for the material section of the utensil having a square cross-sectional configuration. Murdick et al. teaches that it is known to provide a cap/utensil combination with a utensil having a square material section (see figure 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the cap/utensil combination with the material section having a square configuration, as taught by Murdick et al., since it has been held that a change of shape is a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed container was significant (*In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966)).

6. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stanish (U.S. 4,216,875) in view of Atkinson (U.S. 5,705,212). Stanish discloses the claimed invention except for the rib structure having a plurality of rib segments. Atkinson teaches that it is known to provide a cap/utensil combination with a plurality of rib segments (see elements 30 and 32). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the cap/utensil combination of Stanish with the continuous rib being replaced by a plurality of rib segments, such as those of the Atkinson cap, in order to save on material costs and increase the flexibility of the cap.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art is cited for the cap/utensil combination.

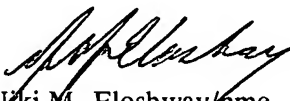
8. THIS ACTION IS NON-FINAL.

9. In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who

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authorize charges to a USPTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX will be promptly forwarded to the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is (571) 272-4538. The examiner is in the office on Thursdays and Fridays. Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Receptionist at (703) 308-1148.

  
Niki M. Eloshway/nme  
Patent Examiner  
March 3, 2005